IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
INCOME TAX APPEAL (L) NO.264 OF 2003

The Commissioner of Income-tax. .. Appellant
v/s.
M/s.Associated Cables Pvt.Ltd. .. Respondent

Mr.S.M.Shah with Mr.P.P.Kakade for appellant.
Mr.Arun Sathe with Mr.Mandar Vaidya for res.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 7th August 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The question of law sought to be raised in this Appeal is as to whether the retention money could be considered to be the income of the assessee in the year in which the amount was retained. The Income Tax Appellate Tribunal has referred to a judgment of the Tribunal in **206 ITR 46 (ITAT)**. Mr.Sathe appearing for the respondent has, however, drawn our attention to two judgments viz. of Calcutta High Court and the Madras High Court. The Calcutta High Court judgment is reported in **179 ITR 8 in the case of CIT vs. Simplex Concrete Piles (India) Pvt. Ltd.** A Division Bench of the Calcutta High Court in that matter has held that the payment of retention

money in the case of contract is difficult and is contingent on satisfactory completion of contract work. Right to receive the retention money is accrued only after the obligations under the contract are fulfilled and, therefore, it would not amount to an income of the assessee in the year in which the amount is retained. The other judgment relied upon is in the case of **CIT vs. Ignifluid Boilers (I) Ltd. reported in 283 ITR 295**. In that judgment also, a Division Bench of the Madras High Court has held that the amount retained does not accrue to the assessee and, therefore, the assessee would not be liable.

3. In view of what is stated above, there is no reason to entertain the Appeal. Appeal is dismissed.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)